

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Giansante	Team: Squad #8	CCRB Case #: 201801245	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/07/2018 11:51 PM	Location of Incident: In front of 640 South Conduit Boulevard	Precinct: 75	18 Mo. SOL 8/7/2019	EO SOL 8/7/2019	
Date/Time CV Reported Thu, 02/08/2018 12:09 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 02/14/2018 11:13 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Gavier Almanzar	09934	956380	PSA 2
2. POM Nicholas Salvadori	21881	959963	PSA 2
3. POM Jason Kwan	10201	961874	PSA 2
4. POM Volodymyr Burdeynny	14915	954580	PSA 2

Officer(s)	Allegation	Investigator Recommendation
A.POM Gavier Almanzar	Force: Police Officer Gavier Almanzar pointed his gun at § 87(2)(b)	
B.POM Nicholas Salvadori	Force: Police Officer Nicholas Salvadori pointed his gun at § 87(2)(b)	
C.POM Jason Kwan	Force: Police Officer Jason Kwan pointed his gun at § 87(2)(b)	
D.POM Volodymyr Burdeynny	Force: Police Officer Volodymyr Burdeynny pointed his gun at § 87(2)(b)	
E.POM Gavier Almanzar	Abuse: Police Officer Gavier Almanzar frisked § 87(2)(b)	
F.POM Volodymyr Burdeynny	Abuse: Police Officer Volodymyr Burdeynny searched the vehicle in which § 87(2)(b) was an occupant.	

Case Summary

On February 8, 2018, § 87(2)(b) filed the following complaint by phone with IAB. The CCRB received the complaint on February 14, 2018.

On February 7, 2018, shortly before 11:51 p.m., § 87(2)(b) was driving east on Liberty Avenue toward South Conduit Boulevard in Brooklyn. Police Officers Gavier Almanzar, Nicholas Salvadori, Jason Kwan, and Volodymyr Burdeynyy, all of PSA2, were patrolling in an unmarked black passenger van. The officers allegedly saw that § 87(2)(b) vehicle had an inoperative rear license plate light, and they attempted to pull him over. § 87(2)(b) refused to pull over and called 911. He eventually stopped in front of a gas station at 640 South Conduit Boulevard. All four officers allegedly pointed their guns at § 87(2)(b) upon exiting the van (**Allegations A-D: Force**, § 87(2)(g)). PO Almanzar allegedly frisked § 87(2)(b) (**Allegation E: Abuse of Authority**, § 87(2)(g)). PO Burdeynyy searched § 87(2)(b) vehicle (**Allegation F: Abuse of Authority**, § 87(2)(g)).

The investigation did not obtain any video footage in this case.

Findings and Recommendations

- **Allegation (A) Force: Police Officer Gavier Almanzar pointed his gun at § 87(2)(b)**
Allegation (B) Force: Police Officer Nicholas Salvadori pointed his gun at § 87(2)(b)
Allegation (C) Force: Police Officer Jason Kwan pointed his gun at § 87(2)(b)
Allegation (D) Force: Police Officer Volodymyr Burdeynyy pointed his gun at § 87(2)(b)

It is undisputed that § 87(2)(b) refused to stop his vehicle for a number of blocks after the officers activated the emergency lights on their unmarked vehicle, ostensibly because he did not think the unmarked vehicle was actually an NYPD vehicle. § 87(2)(g)

§ 87(2)(b) made statements to a 911 operator during the incident (BR01; BR02). He also gave an account of the incident to IAB during a phone call which took place shortly after the incident (BR03; BR04). He also provided a phone statement and an in-person statement to the CCRB (BR05; BR06).

The recording of § 87(2)(b) first call to 911 indicates that he called just as he was stopping his vehicle. He told the operator that he was being stopped by an unmarked van with no lights on, and that he was scared for his life. During the call, § 87(2)(b) asked the operator multiple times to send officers to the scene.

§ 87(2)(b) can be heard speaking to officers during the 911 call. Unfortunately, § 87(2)(b) was using a speakerphone system in his vehicle, and his conversation with the officers is largely indecipherable in the 911 call recording. Shortly after the call began, § 87(2)(b) said of the officers, “Now they’re yelling and screaming at me to get out the car with my hands up.” He can also be heard telling them, “You came up behind me with no lights on,” “You didn’t have no lights on,” and “You had no lights on when you came up behind me. You’re in a black Chevy van. I don’t know nobody.” At one point, § 87(2)(b) can also be heard telling the officers, “I got to put the car in park. I got to put the car in park.”

§ 87(2)(b) eventually told the operator that the officers were in uniform, and that they were from PSA2. He claimed that there were five officers present. The operator terminated the call after § 87(2)(b) stopped responding to her questions and did not speak for more than a minute.

§ 87(2)(b) called 911 again, apparently immediately after the conclusion of the incident, and was connected to IAB. He recounted to IAB that the unmarked van did activate its flashing lights,

but that he did not stop because he did not think it was a police vehicle. He eventually stopped after the van pulled alongside him and he could see that it contained uniformed officers. He now recounted that there were only four officers present, and he alleged that they all pointed their guns at him after they exited the van. They were yelling at him for not pulling over. The officers continued to yell even after § 87(2)(b) explained why he had not stopped immediately. The officers instructed § 87(2)(b) to exit his vehicle even though he was on the phone with 911.

In his CCRB phone statement, § 87(2)(b) provided a more detailed account than that which he gave to IAB. He specified that the officers stopped their van in front of his vehicle, and he reiterated that all four officers pointed their guns at him upon exiting the van. He also recounted that PO Almanzar exited from the driver's side of the van, that PO Almanzar approached the driver's window of his vehicle, that PO Almanzar continued to point his gun at him from that position, and that PO Almanzar repeatedly screamed, "Get out of the car!" PO Almanzar's face was very red, and he appeared to have "roid rage."

§ 87(2)(b) kept his hands up in the air, and he tried to explain that he could not exit his vehicle because it was still in gear. PO Almanzar opened the driver's door and grabbed § 87(2)(b) hand, apparently in an attempt to pull him out of the vehicle. § 87(2)(b) pulled his hand away from PO Almanzar and again told him that the vehicle was still in gear. § 87(2)(b) told all the officers that, if his vehicle moved because he exited while it was still in gear, they would claim that he attempted to strike them with the vehicle.

PO Kwan opened the front passenger door and saw from § 87(2)(b) dashboard phone system that he was on the phone with 911. PO Kwan apprised the other officers of this fact and then holstered his gun. However, PO Almanzar kept his gun out and ordered § 87(2)(b) to get off the phone and to exit the vehicle. § 87(2)(b) told PO Almanzar, "I'm scared for my life. Please don't touch me." PO Almanzar again ordered him to exit, and § 87(2)(b) asked if he could shift the car into park. PO Almanzar assented, and § 87(2)(b) shifted the car into park.

PO Almanzar again ordered § 87(2)(b) to exit the vehicle, and § 87(2)(b) asked why he had to do so. He also screamed to the 911 operator to send other officers to the scene. PO Almanzar asked § 87(2)(b) if he was refusing to exit, and § 87(2)(b) confirmed that he did not intend to exit the vehicle. However, § 87(2)(b) eventually swung one leg out of the car, at which point PO Almanzar grabbed his left bicep and pulled him out to a standing position. § 87(2)(b) kept his hands up. PO Burdeynny and PO Salvadori had holstered their guns by this time. PO Almanzar did not holster his gun until § 87(2)(b) had been brought to the rear of the vehicle.

In his in-person statement, § 87(2)(b) recounted calling 911 at an earlier point while he was still being pursued by the officers, and he described a longer conversation with the operator which is not supported by the 911 call recording. He also claimed that he pulled over "immediately" after he saw that the van contained a uniformed officer, when the van pulled alongside him at the intersection of Liberty Avenue and South Conduit Boulevard. He could not reconcile this claim with the fact that he actually continued driving for six blocks on the Conduit before stopping. § 87(2)(b) reiterated during the in-person interview that all four officers pointed their guns at him.

§ 87(2)(b) recounted that PO Almanzar repeatedly screamed "Get out!" at him when he approached the driver's window, and that PO Kwan responded by yelling at PO Almanzar, "Chill, he's on the phone with 911." He also specified that, when PO Almanzar attempted to pull him out of the vehicle, PO Almanzar continued to scream, "Get out! Get out! Are you refusing to get out?!"

In his IAB statement, § 87(2)(b) recounted that the officers told him that he was being stopped for having a broken license plate light. He seemed to admit that he did, in fact, have an

inoperative plate light, as he said of the plate light bulbs, “I have two of them. One of them was out.” He later said, “[The officers] say my light was off. I can’t argue if my light was on or off.” § 87(2)(b) also told the IAB officer that he was not disputing the vehicle stop or the summons he received for the inoperative plate light, and that he was mainly disputing the aggressive manner in which the officers approached him and the subsequent vehicle search (discussed in Allegation G).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) also recounted that, during the time PO Almanzar stood with him at the rear of the vehicle, PO Almanzar told him that the officers had been trying “to see if [his] lights were working.” § 87(2)(b) then looked at his vehicle’s taillights and exclaimed, “They’re on right now!” § 87(2)(b) claimed that the officers never actually told him why he was stopped, and that he did not learn of their claim that his plate light was out until PO Almanzar handed him the summons for it. PO Almanzar specified to him that the left bulb was inoperative.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) also claimed that he did not inspect the plate bulbs on scene because he was too afraid, but that they were both functional when he returned home. § 87(2)(b) stressed, “It was a bogus stop. His ticket was false. The stop was false. Everything was false.” However, § 87(2)(b) also said that he went to an auto mechanic after the incident and had both plate bulbs replaced. He explicitly confirmed that he deliberately paid to have two functional bulbs replaced, and said that he did so to get a receipt for the replacement which he could present at traffic court.

The narrative portion of the summons states that the “right bulb” was inoperative (BR07). NYS DMV records indicate that § 87(2)(b) summons was eventually dismissed, apparently because the equipment violation had been cured (BR08).

All four officers steadfastly denied that any officer ever so much as drew a gun during the incident, much less that any officer ever pointed a gun at § 87(2)(b). The four officers’ accounts differed, however, with regard to various aspects of the incident, including the basis for the vehicle stop, the positions the officers eventually took with respect to § 87(2)(b) vehicle, the general tenor of the officers’ interaction with § 87(2)(b) and whether officers questioned, frisked, or searched § 87(2)(b) or his vehicle.

PO Almanzar recounted that all the rear lights on § 87(2)(b) vehicle, including the taillights, were not illuminated when the officers initially tried to pull him over (BR09). He also recounted that § 87(2)(b) failed to signal while turning onto the Conduit. He also claimed that § 87(2)(b) activated the lights after he turned onto the Conduit, but that the right license plate light remained dark. PO Almanzar recounted approaching the front passenger door of § 87(2)(b) vehicle, while PO Kwan went to the driver’s door. PO Burdeynny and PO Salvadori both stood on the passenger side of the vehicle. PO Almanzar confirmed that he recognized that § 87(2)(b) was on the phone with 911, and he claimed that the officers waited approximately 4-5 minutes so that § 87(2)(b) could complete his conversation with the 911 operator. PO Almanzar denied that any officer ordered § 87(2)(b) to exit the vehicle, and he denied that § 87(2)(b) ever said that he could not exit because he needed to shift the vehicle into park. In fact, PO Almanzar recounted that he invited § 87(2)(b) to exit to inspect the inoperative plate light, and that § 87(2)(b) acknowledged that the light was inoperative.

PO Almanzar confirmed that he was the officer who obtained § 87(2)(b) license and paperwork, who then entered the unmarked van to write the summons, and who then returned to § 87(2)(b) vehicle to hand him the summons.

PO Kwan did not recall if § 87(2)(b) vehicle's taillights were illuminated, and in his recollection, the entire license plate area was not illuminated (BR10). PO Kwan recounted approaching the rear driver's door of § 87(2)(b) vehicle. He claimed that PO Salvadori approached the front driver's door, while PO Burdeynny and PO Almanzar were on the passenger side. PO Kwan recalled that, after approaching the vehicle, PO Salvadori attempted to state his name and possibly his shield number aloud so that the 911 operator with whom § 87(2)(b) was speaking could confirm that there were genuine officers involved in the stop.

PO Kwan believed that an officer instructed § 87(2)(b) to exit the vehicle, but he denied that any officer yelled at § 87(2)(b) argued with him about why he had to exit the vehicle, or attempted to remove him physically. PO Kwan also recounted that § 87(2)(b) wanted to exit the vehicle to inspect the license plate lights.

PO Salvadori similarly only recalled seeing a problem with the vehicle's plate lights, and he could not recall if one or both lights were inoperative (BR11). PO Salvadori recounted that he approached the driver's window, and that PO Kwan was on the driver's side with him. PO Salvadori heard the 911 operator ask § 87(2)(b) if the officers were in uniform, and he told the operator, "Yes, I'm in uniform." He also tried to explain to the operator that the officers had been trying to pull over § 87(2)(b) for some time, but he was not sure if the operator heard him. PO Salvadori denied that he yelled at § 87(2)(b) or ordered him to exit the vehicle, and he claimed that § 87(2)(b) asked to exit the vehicle so he could inspect the license plate lights.

PO Burdeynny recalled seeing that one of the plate lights was inoperative (BR12). PO Burdeynny recounted that he approached the passenger side of § 87(2)(b) vehicle. He could not recall where any of his partners were at that point. He denied that any officer ever yelled at § 87(2)(b). He claimed, however, that § 87(2)(b) yelled and cursed at the officers while repeatedly asking them why he had been stopped. PO Burdeynny then ordered § 87(2)(b) to exit the vehicle. He denied that any officer tried to remove § 87(2)(b) from the vehicle. PO Burdeynny remained at the passenger side while other officers stood with § 87(2)(b) at the rear of the vehicle.

§ 87(2)(g), PO Burdeynny recounted that he requested and obtained § 87(2)(b) paperwork after § 87(2)(b) got back into his vehicle. He claimed that he had an extended argument with § 87(2)(b) in which § 87(2)(b) continually refused to provide his paperwork. The other officers did not recount such an exchange taking place. PO Burdeynny claimed that he eventually obtained § 87(2)(b) paperwork and then brought it to PO Almanzar at the unmarked van.

It should be noted that § 87(2)(b) described the officer who continued to point a gun at him while aggressively ordering him to exit the vehicle as a very pale white man who had stripes on the shoulders of his uniform. He also insisted that this same officer obtained his license and other paperwork, returned to the unmarked van, and brought him the summons. None of the officers had stripes on his shoulders. PO Almanzar is a Hispanic man and not pale-skinned, but he is the officer who wrote the summons and brought it to § 87(2)(b), § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(b), § 87(2)(g)
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- **Allegation (E) Abuse of Authority: Police Officer Gavier Almanzar frisked § 87(2)(b)**

In his phone statement, § 87(2)(b) recounted that, upon exiting the vehicle and walking to the rear with PO Almanzar, PO Almanzar asked him, “You got anything on you I should know about?” § 87(2)(b) said that he did not, and he told PO Almanzar, “You can check.” PO Almanzar then frisked the outside of § 87(2)(b) sweatpants pockets. He also recounted that PO Kwan later asked him if he had any weapons in his vehicle, and that told PO Kwan that the officers could search his person. The officers did not search him.

In his in-person statement, § 87(2)(b) first recounted merely that PO Almanzar asked for permission to search his person, and that he provided consent. However, he later explained that PO Almanzar asked him if he had any weapons and he said that he did not. PO Almanzar then asked, “Do you have anything on you that will stick me?” § 87(2)(b) again said that he did not. PO Almanzar then frisked his pockets and waistband. § 87(2)(b) now denied that PO Almanzar ever asked for permission to frisk or search him, and confirmed that no officer ever searched his pockets.

PO Almanzar denied that any officer ever asked § 87(2)(b) if he had any weapons or drugs on his person, denied that he ever asked § 87(2)(b) permission to frisk him, and denied that any officer ever frisked § 87(2)(b) § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

- **Allegation (F) Abuse of Authority: Police Officer Volodymyr Burdeynny searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that PO Burdeynny briefly leaned into the front passenger side of § 87(2)(b) vehicle, braced himself by placing a hand on the front passenger seat, and visually inspected the area beneath the seat.

In his phone conversation with IAB, § 87(2)(b) briefly noted that two white officers searched his vehicle.

In his CCRB phone statement, § 87(2)(b) recounted that PO Kwan asked if he had any weapons in his vehicle, and he told PO Kwan that he did not. PO Kwan asked, “Do you mind if I look?” § 87(2)(b) told PO Kwan that he could search him and his vehicle, and he told all the officers that they could search anything they wanted to because he had nothing to hide. PO Kwan entered through the passenger side and PO Almanzar entered through the driver’s side. They looked under the seats, under the floor mats, and in the glove compartment.

In his in-person statement, § 87(2)(b) recounted that PO Almanzar asked him, “Do you have anything in your vehicle that I need to know about?” § 87(2)(b) said that he did not. PO Almanzar then asked if he could search the vehicle, and § 87(2)(b) answered, “I have no problem with you searching the car.” Either PO Salvadori or PO Burdeynny then entered the vehicle through both passenger-side doors. The officer shined a flashlight around and looked under the seats. § 87(2)(b) did not see if the officer opened the glove compartment. § 87(2)(b) had his back turned to the vehicle at the time. He confirmed specifically that he only saw one officer enter the vehicle.

PO Almanzar, PO Kwan, and PO Salvadori all denied that any officer searched § 87(2)(b) vehicle or asked for permission to do so. PO Almanzar denied specifically that he ever asked § 87(2)(b) if there was a weapon in his vehicle. PO Kwan could not recall if he ever asked § 87(2)(b) if there was anything in the vehicle which he needed to know about.

PO Burdeynny’s account differed from that of his partners. He admitted to briefly searching inside § 87(2)(b) vehicle. He recounted that he approached the vehicle on the passenger side, and that he focused upon § 87(2)(b) hands while § 87(2)(b) argued with officers on the driver’s side. The only physical movement PO Burdeynny saw § 87(2)(b) make before he exited the vehicle was to reach for his phone in the center console. PO Burdeynny remained at the passenger side while § 87(2)(b) stood at the rear with other officers.

PO Burdeynny specified that § 87(2)(b) had been made to stand at the rear so that the officers could check inside the vehicle to ensure that there was nothing on or between the seats or on the floor. PO Burdeynny then opened the front passenger door, leaned inside while resting one hand or arm on the front passenger seat, and looked on the floor and beneath the seat. PO Burdeynny only visually inspected the interior, and did not touch any part of the interior except for the front passenger seat. He did not open the glove compartment. He estimated that his inspection of the front passenger area lasted only a couple seconds. After performing the search, PO Burdeynny informed his partners that the vehicle was clear and § 87(2)(b) could be allowed back inside.

PO Burdeynny also recounted that another officer, who had been standing at the driver’s side, performed a similar search in the area of the driver’s seat. He could not recall which officer did this.

PO Burdeynny performed the brief search of the front passenger area because he feared that there was a weapon in the vehicle. He based this fear upon the fact that § 87(2)(b) had refused to pull over, and that he had been generally uncooperative with the officers once he did finally pull over.

PO Burdeynny denied that he ever asked § 87(2)(b) if there was any contraband in the vehicle, and he denied that § 87(2)(b) ever provided consent for a vehicle search.

As with the previous allegations, the facts of this portion of the incident are in dispute, especially as PO Burdeynny claimed that a second officer also entered § 87(2)(b) vehicle. However, as § 87(2)(b) only recounted seeing one officer search inside the vehicle, and as PO

Burdeynny was the only officer to admit to entering the vehicle, the investigation could not but conclude that PO Burdeynny was the sole officer to do so.

Although § 87(2)(b) recounted that he provided consent for a vehicle search, PO Burdeynny denied that he heard § 87(2)(b) do so, or that he based his search of the vehicle upon any such consent. § 87(2)(b), § 87(2)(g)

Once a vehicle's occupants have been removed, a search is conducted when an officer breaches the plane of a doorway. People v. White, 45 Misc. 3d 1213(A) (2014) (BR13), citing People v. Hernandez, 238 A.D.2d 131 (1st Dept. 1997) (BR14). There may be circumstances where, after a lawful stop, an officer obtains information that leads to the conclusion that a weapon located within the vehicle presents an actual and specific danger to the officer's safety sufficient to justify a further intrusion into that vehicle, notwithstanding the occupants' inability to gain immediate access to the weapon. People v. Ortiz, 25 Misc. 3d 1234(A) (BR15), citing People v. Torres, 74 N.Y.2d 224 (1989) (BR16) & People v. Mundo, 99 N.Y.2d 55 (2002) (BR17). In such a situation, an officer's belief that the vehicle contains a weapon must be reasonable in view of the totality of the circumstances. People v. Griffin, 42 Misc. 3d 1210(A) (2013) (BR18).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Gavier Almanzar has been a member of service for three years. This is the first CCRB complaint to which he has been a subject (see officer history).
- PO Volodymyr Burdeynny has been a member of service for four years. This is the first CCRB complaint to which he has been a subject (see officer history).

- PO Nicholas Salvatori has been a member of service for two years. This is the first CCRB complaint to which he has been a subject (see officer history).
- PO Jason Kwan has been a member of service for one year. This is the first CCRB complaint to which he has been a subject (see officer history).
 - Both PO Salvatori and PO Kwan are subjects in a complaint filed after this complaint. In that case (#201801268), both officers are subjects of physical force allegations. The investigation into that case is ongoing.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of July 16, 2018, the NYC Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (BR20).
- § 87(2)(b) [REDACTED]

Squad No.: 8

Investigator:	_____ Signature	Inv. Daniel Giansante _____ Print Title & Name	_____ Date
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Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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